

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB DEPRATU**, on February 9, 2001 at 8:00 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bob DePratu, Chairman (R)
Sen. Alvin Ellis Jr., Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Mack Cole (R)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Bill Glaser (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Senate Bill 317, 1/31/2001;
Senate Bill 366, 2/2/2001;
Executive Action: Senate Bill 268 Pass as
amended 9-0; House Bill 192
Pass 9-0; Senate Bill 325 Pass
as amended 9-0; Senate Bill
264 Hold; Senate Bill 352
Indefinitely Postponed 9-0,
amendment passed

HEARING ON SENATE BILL 366

Sponsor: SENATOR DEBBIE SHEA, SD 18, Butte

Proponents: Bill Bermingham, Butte; former Senator J.D. Lynch, Butte; Riley Johnson, NFIB

Opponents: None

Opening Statement by Sponsor: SENATOR SHEA presented the bill. She said this legislation would establish a job gains tax credit to provide a 10 percent tax credit against individual income taxes or corporate license taxes for the salary paid for qualifying new jobs. The minimum salary to establish the credit would be \$17,000 and a maximum of \$50,000. She said this bill would be a good incentive for employers to create more jobs.

Proponents' Testimony: Bill Bermingham from Butte, described himself as a 77 year old grandfather who felt this bill would unlock doors for jobs for his grandchildren. He joked "Butte was a mile high and a mile deep and everyone was on the level."

{Tape : 1; Side : A; Approx. Time Counter : 2.6 - 7.7}

Senator J.D. Lynch, a former legislator from Butte, said he thought it was Abraham Lincoln who said "speeches are like babies, easy to conceive and hard to deliver." He pointed out that economic development was still not accomplished. He felt this bill was a sincere attempt to give incentives to create meaningful jobs. ***{Tape : 1; Side : A; Approx. Time Counter : 7.7 - 11.1}***

Riley Johnson, NFIB, supported the bill. He said to put it into perspective, a \$17,000 job was \$8 an hour. He urged the committee to support the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses: SENATOR ELLINGSON asked about the fiscal impact and the increase in tax revenue for the state. SENATOR SHEA replied that she did not sign the fiscal note. She pointed to the assumptions in #4 regarding the number of jobs created. She was not sure this was realistic, especially seeing the number of businesses shutting down who were dependant on mining. She felt the returns would be good for small businesses. Senator Lynch pointed out there would be no fiscal impact because the jobs were not there now. There would be a new creation of jobs.

Closing by Sponsor: SENATOR SHEA closed.

HEARING ON SENATE BILL 317

Sponsor: SENATOR ALVIN ELLIS, SD 12, Red Lodge

Proponents: Brian Smith, business owner, Montana Brewer's Association; Kristi Blazer, Montana Beer and Wine Wholesalers; Sam Hoffmann, Montana Brewer's Association, Red Lodge; Mark Taylor, Anheuser-Busch

Informational Witness: Neil Peterson, Department of Revenue

Opponents: None

Opening Statement by Sponsor: SENATOR ELLIS presented the bill and read the Fact Sheet describing the reduced beer excise tax for small breweries. **EXHIBIT (tas33a01)**

Proponents' Testimony: Brian Smith, owner and operator of a small brewery in Helena, said the bill was drafted by the state Brewery Association. He said this was about economic development and small business, which included one to three person operations. The bill is a tax reduction but goes further as a protection measure. He pointed out that 85% of beer sales were from big breweries. He noted the importance of Brew Pubs, which are not allowed in Montana. He said this would be by far the most profitable portion of operating a small brewery. In a Brew Pub the brewery would be able to sell a beer for four times what they can sell it for wholesale. All the breweries in Oregon and Washington have some type of Brew Pub operation. He noted that this did put small Montana brewers at a competitive disadvantage. The alcohol business is one of the most heavily regulated industries in the country. Taxes are paid to the federal government every fourteen days. The federal government recognizes the difference between small brewers and large brewers. At the federal level, this is two million barrels per year. This is still a pretty large brewery. The federal government allows a reduced license fee on an annual basis. He described the bill as an economic development bill which would add culture and local flavor so the small breweries would continue to prosper. **{Tape : 1; Side : B; Approx. Time Counter : 1.7 - 11.5}**

Kristi Blazer, representing the Montana Beer and Wine Wholesaler Association, spoke in support of the bill. She said the bill would provide incentives. Competition for craft beers were from Oregon and Washington. Wholesalers could reduce their prices and make Montana breweries more competitive.

Sam Hoffman, representing the brewery in Red Lodge and also the State Brewer's Association, testified in favor of the bill. He described his business as small with 3 employees. He said he was one of the breweries in the state that self distributes, so he paid the excise tax. In 2000, he paid \$1300 in excise tax. That was a lot of money to him, as he paid himself \$6 an hour based on a 40 hour week. **{Tape : 1; Side : B; Approx. Time Counter : 15 - 16}**

Mark Taylor, representing Anheuser-Busch, distributed an amendment **EXHIBIT(tas33a02)** and an Economic Impact statement from the Anheuser-Busch Company. **EXHIBIT(tas33a03)** He said the bill should be amended to protect the storage depots. He said this amendment would address a graduated tax. He pointed out this would address concerns about any discriminatory taxing effect on interstate commerce.

Opponents' Testimony: None

Informational Witnesses: **Neil Peterson**, Process Lead for Department of Revenue, said he was available to answer questions.

Questions from Committee Members and Responses: **SENATOR**

STONINGTON asked **Mark Taylor** to explain the amendments. He said he was unsure of the number of storage depots in the state. Anheuser-Busch had a storage depot and therefore would benefit from the amendment.

SENATOR EKEGREN asked about the storage depot and its effect on the small brewer. **Mr. Smith** said he would resist the amendment. A brewer may have a storage depot in the state but every wholesaler in the state would have the ability to get a storage depot which would allow them to have a tax break on the first twenty thousand barrels of beer. He pointed out that Montana brewers did not operate any licensed storage depot. Anheuser-Busch was in the process of constructing one in Butte.

Closing by Sponsor: **SENATOR ELLIS** closed. He pointed out the bill was about equity and at this point, the industry was dominated by giants. He opposed the amendment as it would enable the incentive be made available for huge depots and out of state brewers. **{Tape : 2; Side : A; Approx. Time Counter : 0 - 4.4}**

EXECUTIVE ACTION ON SENATE BILL 268

SENATOR ELLINGSON MOVED DO PASS. He distributed an amendment. **EXHIBIT(tas33a04)** **SENATOR ELLIS MOVED THE AMENDMENT.** **SENATOR STONINGTON** clarified that the amendment was intended to avoid

impacting the distribution of the Bed Tax money this fiscal year. The question was called on the amendment which was adopted.

SENATOR STONINGTON MOVED THE BILL AS AMENDED. The motion passed unanimously 8-0, with **SENATOR BOHLINGER** being absent.

EXECUTIVE ACTION ON SENATE BILL 192

SENATOR ELLIS MOVED DO PASS SB 192. **SENATOR BOHLINGER** distributed an amendment. **EXHIBIT(tas33a05)** He said the amendment would allow the state to pay the discount fee which was .065% or \$20 thousand dollars annually. He felt that \$20 thousand dollars out of \$4 billion dollar budget was something the state could handle. **SENATOR ELLIS** said he would resist the amendment. The concern, if the state paid the fee, would provide an inducement for taxpayers to put it on their credit card. A lot of credit card limits are substantial and this would give taxpayers float time.

SENATOR COLE said he would not vote for the amendment. His concern was the \$20 thousand dollars could end up being much larger.

CHAIRMAN DEPRATU stated this would be helping citizens by allowing them to pay with their credit cards. The state should not pay the fee as they are not making a profit.

SENATOR EKEGREN pointed out the credit card fees ranged from 1.17-3.5%. This could cost the state \$4 million dollars.

The question was called on the amendment. The motion **FAILED** 1-8, with **SENATOR BOHLINGER** voting for the amendment.

SENATOR STONINGTON MOVED DO PASS SB 192. The motion **PASSED** unanimously.

EXECUTIVE ACTION ON SENATE BILL 325

SENATOR EKEGREN MOVED DO PASS. **Lee Heiman** distributed a technical amendment to the bill. **EXHIBIT(tas33a06)** The question was called on the amendment. The motion **PASSED** unanimously. **Lee Heiman** distributed an amendment that had been requested by AT&T. **EXHIBIT(tas33a07)** **SENATOR STONINGTON MOVED THE AMENDMENT.** She said AT&T made the case during the hearing that the FCC rates be applied uniformly, for example if they were brought into the jurisdiction of the Flathead Cooperative. **Mr. Baker** said the purpose of the amendment was to identify those areas that have

been previously regulated utility property, such as Flathead Electric's property in Kalispell, that AT&T was paying pole attachment rates based on the FCC mandated formula. This amendment would say any territory that falls under that previously regulated utility definition would still abide by the FCC mandated pole attachment rates. **Dave Wheelihan** said the way the amendment was drafted was that it goes further by including annexed areas. The effect of this would be that part of the co-op would go under the FCC rule and the rural areas would not be. He pointed out the FCC, twice in the last ten years, has specifically excluded cooperatives from its jurisdiction over pole and wire attachments. The reason it had done that was because cooperative were consumer owned, had boards that set rates and policies on behalf of the co-op members. Co-ops were self governing. The amendment would involve the FCC . **{Tape : 2; Side : A; Approx. Time Counter : 25.7 - 29.7}**

SENATOR STONINGTON said it did not seem fair for AT&T to go from one jurisdiction, with the exact same pole and wire, to another and have their rates built in. **Mr. Baker** replied that the Flathead situation was the unfortunate consequences of a sale and new pole attachment fees. He pointed out that in reference to rural versus urban areas, cities and towns across America had been expanding into rural service territories over the last forty or fifty years. There were many cooperatives throughout the country that were much more urban than what is seen in Montana. In spite of that, the FCC in the last ten years, has still recognized that self governance. **{Tape : 2; Side : A; Approx. Time Counter : 29.7 - 30}**

SENATOR ELLINGSON asked about the guidelines and whether TCI Cable was a member of the co-op. **Mr. Baker** said they were members of some cooperatives. **CHAIRMAN DEPRATU** said they could become a member under the provisions of this bill because they had an office in downtown Kalispell. **SENATOR ELLINGSON** asked about the rates being established by federal statutes that had changed during this period of time. **Mr. Baker** said it was his understanding that the formula could arrive at different rates under different time periods. It was an ongoing process as the contracts with the pole attachments expired and were renegotiated. You take a formula from the FCC and the parties get together and negotiate. In this case, in the acquisition of the Pacific Corp assets, Flathead Electric established a separate subsidiary called E&I which was not part of the co-op. This bill would allow them to all be under jurisdiction of the cooperative territory. All of a sudden it is a separate subsidiary where it was previously under Pacific Corp ownership, controlled by the FCC. Now, all of a sudden, it has no regulation if the bill were to pass. He stated they would have no recourse under pole

attachment rates. **{Tape : 2; Side : B; Approx. Time Counter : 0 - 3.4}**

SENATOR ELLINGSON asked about any negotiation process between TCI and this entity of Flathead Electric Co-op. **Mr. Baker** replied he did not know. He said AT&T had petitioned the FCC and the FCC had ruled against them initially on the classification for the E&I subsidiary. That petition is under reconsideration now at the FCC. He said rates would not have gone up to that extent. Prior to the acquisition, there were two sets of rates that were reflected in those invoices. One was \$13.40 a pole and the other was \$3.75 a pole. One was under the FCC formula and was with no regulation. **{Tape : 2; Side : B; Approx. Time Counter : 3.4 - 5.2}** **Mr. Wheelihan** commented that the FCC adopted a new pole rate formulas in 1998. That was the same year that Flathead Electric acquired these facilities.

SENATOR ELLIS commented that before this time, they just took the top of the pole where the wires were attached, figured that as a cost basis and divided by the number of wires that were used by the different customers. The change was that they went clear into the ground and used the whole pole as a cost basis, which increased the basis considerably. He said he would resist the amendment because self regulation is almost always less expensive and better for the consumer than PSC or legal regulation that is so cumbersome. Also, the direction today is away from regulation, therefore, he opposed the amendment.

The question was called on the amendment. The motion **PASSED** on a 5-4 roll call vote.

SENATOR ELLIS MOVED THE BILL AS AMENDED. He pointed out the co-ops never had their power rates under regulation. Their customers are protected better because they had the foresight to participate in power purchases and the development of power generation, which PSC's have generally objected to because it marginally increases the cost of power to the consumer. Therefore, co-ops because they know that their business is expanding, have looked to the future and regulators have not looked to increase generation to relieve the pressures that California is imposing today. **{Tape : 2; Side : B; Approx. Time Counter : 5.2 - 10.5}**

The question was called. The motion **PASSED** unanimously.

EXECUTIVE ACTION ON SENATE BILL 264

CHAIRMAN DEPRATU noted there were two conflicting sets of amendments that needed to be worked on. He suggested executive action be held until this issue was cleared up.

EXECUTIVE ACTION ON SENATE BILL 352.

Lee Heiman distributed amendments. **EXHIBIT(tas33a08)**

SENATOR ELLIS MOVED THE BILL AND THE AMENDMENT. **CHAIRMAN DEPRATU** said the way the bill had been written it would allow anyone to take advantage of the twenty day grace period and that was not the intent of the bill. The intent was to help elderly persons who were short of funds to have a grace period. **Lee Heiman** explained the amendment that would cover only those who qualified under the low income property act.

The question was called on the amendment. The motion was adopted unanimously.

SENATOR STONINGTON said she had problems with the bill. **SENATOR HARRINGTON** commented that he felt this was poor tax policy. If you set a date taxes are due, that is the date. He understood why a certain group of people were given an extension. He felt this would be a problem at the counties.

SENATOR STONINGTON said the problem with the bill is it allows for a late payment. Everyone knows property taxes are due the same time every year. What if someone did not make the grace period date. You would then owe all the penalty and interest back to the day it was due. The same people who would have trouble paying on time would have an even worse time if they delayed and missed the second payment. It does not appear to solve the problem.

SENATOR STONINGTON MADE A SUBSTITUTE MOTION TO TABLE THE BILL. A roll call vote was taken which **FAILED** 4-5, with four members voting to table.

SENATOR GLASER pointed out this could mean a fiscal impact on counties which resulted in an unfunded mandate. **SENATOR ELLIS** felt the bill would be poor tax policy.

SENATOR GLASER MOVED TO INDEFINITELY POSTPONE. The motion **PASSED** unanimously.

ADJOURNMENT

Adjournment: 9:58 A.M.

SEN. BOB DEPRATU, Chairman

DEB THOMPSON, Secretary

BD/DT

EXHIBIT (tas33aad)